

Remarks

Applicants have canceled claims 1-41 and have added new claims 42-76. Support for the added claims is found in the specification and claims as filed.

Support for claims 42, 50, 57, 64 and 70 is found, for example, at: page 9, lines 10-12 (methods for treating, preventing or ameliorating infection in a subject); page 14, line 20 (hepatitis B virus (HBV)); page 56, lines 1-6 (sufficient amount administered), page 55, lines 18-24 (administration to a subject) and many sequences (composition comprising nucleic acid molecules containing at least one unmethylated CpG dinucleotide).

Support for nucleic acid molecules comprising the sequence 5' TCG 3' (claims 43, 51, 58) is found, for example, at: page 8, lines 10-14 and in the claims as filed.

Support for the sequences presented in the claims is found, for example, in: Table 1, oligo 3Da (SEQ ID NO:21) and oligo 3Db (SEQ ID NO:22) (nucleic acid molecules comprising the sequence 5'-purine, purine, C, G, pyrimidine, pyrimidine, C, G-3'); and SEQ ID NOs: 3, 7, 9, 10, 27, 35, 54, 70 and 76 (specific sequences as well as nucleic acid molecules comprising the sequence 5'-purine, purine, C, G, pyrimidine, pyrimidine, C, C-3') and claims 7, 23, 26, 32 and 35 as filed.

Support for administering compositions to a mammal is found, for example, at: page 9, lines 3-4, page 17, lines 14-15, and in claim 31 as filed.

Support for administering the nucleic acid molecules in combination with a HBV antigen or vaccine (claim 49) is found, for example, at page 9, lines 12-13 and page 53, lines 27-30.

Support for administering an antigen not in conjunction with administration of the nucleic acid composition and for administering a composition that is free of HBV antigen is found, for example, at page 9, lines 10-13, where it is stated that the nucleic acid compositions can be administered to treat infection, and also can be administered to stimulate a subject's response to a vaccine (which has or encodes antigen; see page 53, line 31 to page 54, line 3). These claims

also are supported by the experimental results disclosed in the specification and the Examples, particularly Examples 5, 8 and 9.

Request for interference under 37 CFR §1.604(a)

Pursuant to 37 C.F.R. 1.604(a), Applicants seek to have an interference declared with U.S. published patent application US 2002-0098199 A1 (Van Nest), serial no. 09/802,370, filed March 9, 2001 and published on July 25, 2002 and any continuation or divisional applications depending therefrom (including U.S.S.N. 10/357,760 filed on February 3, 2003). Applicants seek to have an interference declared with US 2002-0098199 A1 and/or U.S.S.N. 10/357,760 because the subject matter claimed in US 2002-0098199 A1 and/or U.S.S.N. 10/357,760 was invented by Applicants as is disclosed in one or more of the applications to which this application claims priority, such as the application now issued as US 6,239,116 B1.

Applicants propose a count for an interference as follows:

Proposed Count 1

Claim 1 of US 2002-0098199 A1 and/or its equivalent in U.S.S.N. 10/357,760

or

Claim 8 of US 2002-0098199 A1 and/or its equivalent in U.S.S.N. 10/357,760

or

Claim 42 of this application

or

Claim 50 of this application

or

Claim 57 of this application

or

Claim 64 of this application

or

Claim 70 of this application.

Claims 42-48 and 50-73 presented above correspond to the proposed count. Claims 1-20 of US 2002-0098199 A1 and/or their equivalents in U.S.S.N. 10/357,760 correspond to the proposed count.

The claims added in this preliminary amendment correspond to and were substantially copied from the claims of US 2002-0098199 A1 as follows:

Claims of US 2002-0098199 A1	Claims added herewith
1	42, 50, 57, 64, 70
2	43, 51, 58, 65, 71
3	44, 52, 59, 66, 72
4	45, 46, 53, 54, 60, 61, 67, 73
6	47, 55, 62, 68, 74
7	48, 56, 63, 69, 75
8	42, 50, 57, 64, 70
9	43, 51, 58, 65, 71
10	44, 52, 59, 66, 72
11	45, 46, 53, 54, 60, 61, 67, 73
13	47, 55, 62, 68, 74
14	48, 56, 63, 69, 75
15	76

Applicants wish to bring to the attention of the examiner that the disclosure on which the added claims are based was first filed on October 30, 1997, and the corresponding PCT patent application was published on May 7, 1998 as PCT/US97/19791 (WO 98/18810), and also was issued as US 6,239,116 B1 on May 29, 2001. The published PCT application and US 6,239,116 B1 should be a statutory bar to the patentability of all of the claims of U.S. published patent application US 2002-0098199 A1 and/or U.S.S.N. 10/357,760, but not to the patentability of the claims of this application.

Respectfully submitted,



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